

E-Filed On 11/30/06

1 MOT
 2 SUSAN WILLIAMS SCANN, ESQ.
 Nevada Bar No. 000776
 3 PAUL R. CONNAGHAN, ESQ.
 Nevada Bar No. 003229
 DEANER, DEANER, SCANN, MALAN & LARSEN
 4 720 South Fourth Street, Suite #300
 Las Vegas, Nevada 89101 (702) 382-6911
 5 Attorneys for Binford Medical Developers, LLC

6
 7 UNITED STATES BANKRUPTCY COURT
 8 FOR THE DISTRICT OF NEVADA

9 In re:) Case No. BK-S-06-10725 LBR
 USA COMMERCIAL MORTGAGE) Case No. BK-S-06-10726 LBR
 10 COMPANY,) Case No. BK-S-06-10727 LBR
) Case No. BK-S-06-10728 LBR
 11 Debtor) Case No. BK-S-06-10729 LBR

12 In re:) Chapter 11
 USA CAPITAL REALTY ADVISORS, LLC.) Jointly Administered Under
 13 Debtor) Case No. BK-S-06-10725 LBR

14 In re:) Adversary No. 06-01212
 USA CAPITAL DIVERSIFIED TRUST)
 15 DEED FUND, LLC.)

16 Debtor) Date of Hearing: OST Requested
 17) Time of Hearing: OST Requested

18 In re:) Affects:
 USA CAPITAL FIRST TRUST) ☒ USA Commercial Mortgage Company
 19 DEED FUND, LLC.) OUSA Capital Diversified Trust Deed Fund, LLC
 20 Debtor) ☒ USA Capital First Trust Deed Fund, LLC
 In re:) OUSA Securities, LLC
 USA SECURITIES, LLC.) OUSA Realty Advisors, LLC
 21 Debtor) ☐ All Debtors

22 **MOTION TO TEMPORARILY ALLOW CLAIM OF BINFORD MEDICAL
 DEVELOPERS, LLC FOR VOTING PURPOSES**

23 COMES NOW, the Movant, BINFORD MEDICAL DEVELOPERS, LLC, by and through its
 24 attorney, SUSAN WILLIAMS SCANN, ESQ. of the law firm of DEANER, DEANER, SCANN,
 25 MALAN & LARSEN, and moves this Court pursuant to Federal Rule FRBP 3018(a) to temporarily
 26 allow its claim for the purpose of voting to accept or reject the Debtor's proposed Plan. The Debtor
 27 has not formally objected to Binford's Proof of Claim. Binford has filed an adversary proceeding to
 28 establish the amount of its claim and to obtain possession of \$330,000.00 still held in the

1 Construction Control Account at Fidelity National Title Group.

2 **Binford** did not receive a ballot with the copy of the Disclosure Statement, accordingly, based
3 on the notice, **Binford** is required to file this Motion.

4 FRBP 3018(A) provides as follows:

5 Notwithstanding objection to a claim or interest, the court after
6 notice and hearing may temporarily allow the claim or interest
7 in an amount which the court deems proper for the purposes of
8 accepting or rejecting the plan.

9 **Binford** has filed a Proof of Claim for damages in the estimated amount of \$3,502,383.00 for Breach
10 of Contract, Intentional Misrepresentation and the other theories listed in the Adversary Complaint.
11 A copy of the Proof of Claim and the Amended **Proof of Claim** are attached hereto as Exhibit "1"
12 The only exhibits attached are the Agreement dated August 30,2005, the List of Exhibits and the
13 breakdown of damages. The purpose for this is to reduce the bulk of this Motion. The **Debtor** has
14 just answered the Complaint denying it is in default and counterclaimed for declaratory relief.

15 USA Commercial Mortgage ("USACM") has clearly breached its August 30" Agreement to
16 fully fund the \$8,375,000.00 budget for the **Binford** Medical project. This fact is undisputed. The
17 basic facts are contained in the Declaration of Ken Schmidt in Support of the Motion for Preliminary
18 Injunction. A copy of that Declaration, again without the exhibits due to their bulk, is attached
19 hereto as Exhibit "2". The elements of a claim for Breach of Contract are material failure of a duty
20 under an agreement. Bernard v. Rockwell Development Company, 103 Nev. 132,135,734 P.2d
21 1238 (1987).
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1 Binford requests that this Court grant its Motion to temporarily allow its claim in the amount
2 of \$3,502,383.00 for voting purposes on the Plan.

3 DATED this 30th day of November, 2006
4

5 Respectfully Submitted,

6 DEANER, DEANER, SCANN,
7 MALAN and LARSEN

8
9 By:



10 SUSAN WILLIAMS SCANN, ESQ.

Nevada Bar No. 000776

11 PAUL R. CONNAGHAN, ESQ.


Nevada Bar No. 003229

12 720 South Fourth Street, Suite 300

13 Las Vegas, Nevada 89101

14 Attorneys for Binford Medical Developers, LLC
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EXHIBIT 1

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA		PROOF OF CLAIM		Schedule/Claim ID s579
Name of Debtor: USA Commercial Mortgage Company		Case Number: 06-10725-LBR		E-Filed On <u>11/7/06</u>
See Reverse for List of Debtors and Case Numbers. This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A 'request' for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court or BMC Group in this case. <input type="checkbox"/> Check box if this address differs from the address on the envelope sent to you by the court.		DO NOT FILE THIS PROOF OF CLAIM FOR A SECURED INTEREST IN A BORROWER THAT IS NOT ONE OF THE DEBTORS. If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again. THIS SPACE IS FOR COURT USE ONLY
Name of Creditor and Address:  11321280009794 BINFORD MEDICAL DEVELOPERS, LLC 5200 E 64TH ST INDIANAPOLIS, IN 46220-4708		Creditor Telephone Number () Last four digits of account or other number by which creditor identifies debtor: Binford Medical Developers LLC		
Check here if this claim <input type="checkbox"/> replaces or <input type="checkbox"/> amends a previously filed claim dated: _____				
1. BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Unremitted principal <input type="checkbox"/> Services performed <input type="checkbox"/> Taxes <input type="checkbox"/> Wages, salaries, and compensation (fill out below) <input type="checkbox"/> Other claims against services (not for balances) <input type="checkbox"/> Money loaned <input checked="" type="checkbox"/> Other (describe briefly) <u>Breach of Contract</u> Last four digits of your SS #: _____ Unpaid compensation for services performed from: _____ to _____ (date) (date)				
2. DATE DEBT WAS INCURRED: <u>June 2006</u> 3. IF COURT JUDGMENT, DATE OBTAINED: _____				
4. CLASSIFICATION OF CLAIM. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.				
UNSECURED NONPRIORITY CLAIM \$3,502,383.00 <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is entitled to priority.				
5. SECURED PRIORITY CLAIM <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)*, earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).				
SECURED CLAIM <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____				
<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (____). * Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.				
5. TOTAL AMOUNT OF CLAIM \$ <u>3,502,383.00</u> \$ _____ \$ _____ \$ <u>3,502,383.00</u> AT TIME CASE FILED: (unsecured) (secured) (priority) (Total)				
<input type="checkbox"/> Check this box if claim includes interest and other charges in addition to the principal amount of the claim. Attach itemized statement of all interest and additional charges.				
6. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.				
7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.				
8. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.				
The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Pacific time, on November 13, 2006 for each person or entity (including individuals, partnerships, corporations, joint ventures, trusts and governmental units). BY MAIL TO: BMC Group Attn: USACM Claims Docketing Center P.O. Box 911 El Segundo, CA 90245-0911				THIS SPACE FOR COURT USE ONLY
BY HAND OR OVERNIGHT DELIVERY TO: BMC Group Attn: USACM Claims Docketing Center 1330 East Franklin Avenue El Segundo, CA 90245				
DATE <u>11/8/06</u>	SIGN and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Cheryl Ann Jean, Esq.</u>			


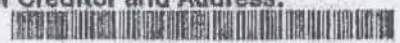
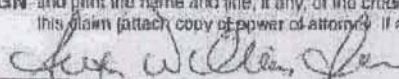
LIST OF EXHIBITS

Construction Loan Agreement dated August 31,2005- attached
Agreement dated August 30,2005 - attached
Mortgage, Assignment of Leases, Rents and Contracts, Security
Agreement, Financing Statement and Fixture Filing - attached
Promissory Note - attached
Breakdown of damages claim

Due to their bulk the following are listed but not attached

First Amendment to Deed of Trust dated September 7,2005
Second Amendment to Deed of Trust dated October 17,2005
Third Amendment to Deed of Trust dated December 28,2005
Fourth Amendment to Deed of Trust dated January 25,2006
Fifth Amendment to Deed of Trust dated February 14,2006
Sixth Amendment to Deed of Trust dated March 8,2006

AMENDED

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA		PROOF OF CLAIM		
		Schedule/Claim ID		8579
Name of Debtor: USA Commercial Mortgage Company		Case Number: 06-10725-LBR		E-Filed On 11/13/06
No. See Reverse for List of Debtors and Case Numbers. This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court or BMC Group in this case. <input type="checkbox"/> Check box if this address differs from the address on the envelope sent to you by the court.		DO NOT FILE THIS PROOF OF CLAIM FOR A SECURED INTEREST IN A BORROWER THAT IS NOT ONE OF THE DEBTORS. If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again. THIS SPACE IS FOR COURT USE ONLY
Name of Creditor and Address:  1132128009794 BINFORD MEDICAL DEVELOPERS, LLC 5200 E 64TH ST INDIANAPOLIS, IN 46220-4708				
Creditor Telephone Number ()		Check here if this claim <input type="checkbox"/> replaces a previously filed claim dated 11/09/06 <input checked="" type="checkbox"/> amends		
Last four digits of account or other number by which creditor identifies debtor: Binford Medical Developers LLC				
1. BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Referee benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Unremitted principal <input type="checkbox"/> Services performed <input type="checkbox"/> Taxes <input type="checkbox"/> Wages, salaries, and compensation (fill out below) <input type="checkbox"/> Other claims against service (not for loan balances) <input type="checkbox"/> Money loaned <input checked="" type="checkbox"/> Other (describe briefly) Breach of Contract, Intentional Misrepresentation and other theories in attached Complaint. Last four digits of your SS #: _____ Unpaid compensation for services performed from: _____ to _____ (date) (date)				
2. DATE DEBT WAS INCURRED: June 2006		3. IF COURT JUDGMENT, DATE OBTAINED:		
4. CLASSIFICATION OF CLAIM. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.				
UNSECURED NONPRIORITY CLAIM \$3,502,383.00 <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is tied to priority.		SECURED CLAIM <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		
5. SECURED PRIORITY CLAIM <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)*, earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (_____). <small>* Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>		
5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: \$ 3,502,383.00 (unsecured) \$ (secured) \$ (priority) \$ 3,502,383.00 (Total)				
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.				
6. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.				
7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.				
8. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.				
The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Pacific time, on November 13, 2006 for each person or entity (including individuals, partnerships, corporations, joint ventures, trusts and governmental units). BY MAIL TO: BMC Group c: USACM Claims Docketing Center P. Box 811 El Segundo, CA 90245-0911				THIS SPACE FOR COURT USE ONLY
BY HAND OR OVERNIGHT DELIVERY TO: BMC Group Attn: USACM Claims Docketing Center 1330 East Franklin Avenue El Segundo, CA 90245				
DATE 11/13/06	SIGN: and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any). 			

Due to USA Capital's filing and subsequent default of its loan, **Binford Medical Developers LLC** has sustained the following losses.

- | | |
|---|------------------|
| 1. Failure to fund balance of loan | \$925,000 |
| 2. Additional interest due to delays of payment on April 30 Draw | \$20,000 |
| 3. Legal Fees having to do with April 30 Draw Request delay | \$4,500 |
| 4. Construction delay due to contractor not receiving confirmation that funds would be available. Approximately 3 months | TBD |
| 5. Loss of Binford Behavioral Science (Tenant) lease because of uncertainty with Developer's construction loan agreement | \$336,825 |
| 6. Loss of Binford Family Practice (Tenant) lease because of uncertainty with Developer's construction loan agreement | \$308,458 |
| 7. Loss of Rescott Group (Tenant) lease because of uncertainty with developer's construction loan agreement | \$142,600 |

NOTE: Tenants do not want to get involved with possible litigious positions with a bankrupt lender.

- | | |
|---|-----------------------|
| 8. Inability to secure a permanent mortgage due to inability to lease up lease up property by September 15. The maturity rate of the construction loan. | Est. \$600,000 |
| 9. Loan fees for short-term loans to keep the project ongoing due to the breach of the loan agreement by not funding the last \$600,000. | \$320,000 |

10. Loan fees and interest cost to replace \$8,375,000 existing construction loan with a new \$10,000,000 construction loan to finish the project.	\$760,000
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11. Legal fees to defend and manage our position in regard to the delays. Inquiries and acquisitions caused by USA Capital's filing and subsequent actions	Est. \$85,000
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TOTAL DAMAGES	\$3,502,383
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EXHIBIT 2

E-Filed On 11/9/06

DECLARATION
SUSAN WILLIAMS SCANN, ESQ.
 Nevada Bar No. 000776
PAUL R. CONNAGHAN, ESQ.
 Nevada Bar No. 003229
DEANER, DEANER, SCANN, MALAN & LARSEN
720 South Fourth Street, Suite #300
Las Vegas, Nevada 89101 (702) 382-6911
Attorneys for Plaintiff Binford Medical Developers, LLC

**UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE
 COMPANY,

Debtor

In re:
 USA CAPITAL REALTY ADVISORS, LLC.

Debtor

In re:
 USA CAPITAL DIVERSIFIED TRUST
 DEED FUND, LLC.

Debtor

In re:
 USA CAPITAL FIRST TRUST
 DEED FUND, LLC.

Debtor

In re:
 USA SECURITIES, LLC.

Debtor

**BINFORD MEDICAL DEVELOPERS,
 LLC, an Indiana Limited Liability
 Company,**

Plaintiff,

vs.

**USA COMMERCIAL MORTGAGE
 COMPANY; et al.**

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter 11
 Jointly Administered Under
 Case No. BK-S-06-10725 LBR

Adversary No.

Date of Hearing:
 The of Hearing:

Affects:
☒ USA Commercial Mortgage Company
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC
☐ USA Realty Advisors, LLC
☐ All Debtors

**DECLARATION OF KEN SCHMIDT
 IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
 TO COMPEL FIDELITY NATIONAL TITLE INSURANCE
 COMPANY TO MAKE DISBURSEMENT FROM LOAN
 FUNDS BEING HELD BY FIDELITY AS DISBURSEMENT AGENT**

KEN SCHMIDT, under penalties of perjury, hereby declares on this 24th day of October, 2006:

1 1. I am the **Managing** Member of Binford Medical Developers, LLC ("**Binford**
2 **Medical**")

3 2 Debtor USA **Commercial** Mortgage Company ("**Debtor**" or "**USACM**") originated a
4 **construction** loan to **Binford** Medical Developers(the "**Binford** Medical Loan") in the principal
5 amount of **\$8,375,000.00** on August **31,2005**. **True and correct** copies of the **note**, deed of trust and
6 **construction** loan agreement are attached hereto as Ex.s 1,2 and 3 respectively.

7 3. The **Binford** Medical Loan is being **used** for the **construction** of a medical **office**
8 building in **Indianapolis, Indiana** (the "**Medical** Building Project"). This building is the **first** of five
9 **medical** office buildings planned for **construction** by **Binford** **Medical**.

10 4. In order to insure that the entire **\$8,375,000.00** would be advanced, **Binford** and
11 **USACM** entered into a separate agreement whereby **USACM** committed to fund all amounts above
12 the initial disbursement of **\$4,250,000.00** up to **\$8,375,000.00** from its own funds. **USACM** also
13 committed to cause the **Direct Lenders** to **forbear from exercising** any rights or remedies during the
14 term of any **default** by **USACM**. A true and correct copy of that **agreement**, dated **August 30,2005**,
15 is attached hereto as Exhibit 4 and incorporated by reference herein (the "**USACM** Agreement")

16 5. When the **Binford** **Medical** Loan was originated, an agreement was reached by
17 **USACM** and **Binford** Medical with **Construction Disbursement Services** of **Fidelity National Title**
18 **Insurance Company** ("**Fidelity**") for **Fidelity** to act as the **disbursement** agent for the **construction**
19 loan funds for the **Binford** Medical Loan.

20 6. Pursuant to this Court's Order in May , 2006, **Fidelity** has been regularly disbursing
21 the **Binford** Medical Loan proceeds pursuant to draw requests submitted to **Fidelity** by the contractor
22 on the **Medical Building Project** with the approval of **Binford** Medical and **USACM**.

23 7. **Fidelity** is currently holding approximately **\$330,000.00** in loan proceeds from the
24 **Binford** Medical Loan. These funds were disbursed to **Fidelity** for the **Binford** loan prior to April
25 **13,2006** and interest is accruing on them.

26 8. In **Binford's** last draw request (draw #12), it sought the remaining balance in the account
27 of approximately **\$540,000.00**. **Binford** received only approximately **\$209,000.00** despite the fact

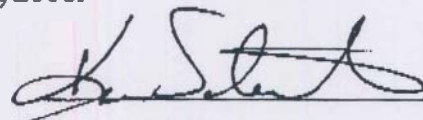
1 that the general contractor and other contractors were due the full amount. This approximate
2 balance of \$330,000.00 is presently being held in the construction control account at Fidelity
3 National Title because USACM has demanded that it be disbursed to pay interest despite the fact
4 that USACM is in default under its obligations under the USACM Agreement. A copy of this draw
5 request is attached hereto as Exhibit "5". The interest reserve has been depleted through no fault of
6 Binford.

7 9. Under the terms of the USACM Agreement, the interest is not presently due and
8 payable because the balance of \$925,000.00 of the Loan has not been funded.

9 10. Binford needs the \$330,000.00 to pay the \$445,000.00 currently due to the general
10 contractor. This amount was due by October 30, 2006. Binford paid the shortage from draw
11 number 12, the September payment due the general contractor, by means of short term financing at
12 very high interest rates. Without the \$330,000.00, the job will be liened, construction stopped and
13 Binford will be unable to obtain the financing to fill the gap that USACM is, apparently, unable to
14 fill.

15 11. The first building is now ninety (90) percent complete. An additional \$925,000.00
16 (including the \$445,000.00 currently due) is needed to complete the contract. If the Medical
17 Building Project is shut down or again delayed, Binford Medical faces the prospect of legal action
18 and resulting legal fees from the contractor and the subcontractors as well as from tenants who will
19 be delayed in being able to move into the Medical Building Project. Binford Medical's interest
20 charges will also increase if the Medical Building Project is shut down or delayed.

21 Respectfully submitted on October 24th, 2006.

22 
23 _____
24 Ken Schmidt

25 OFFICE\CLIENTS\Binford Medical Developers, LLC\DOCS\Affidavit of Ken Schmidt.wpd
26
27
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CERTIFICATE OF MAILING

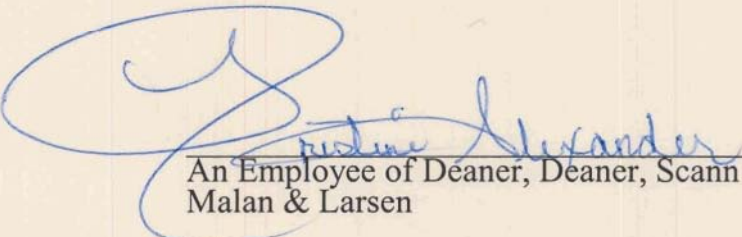
I hereby certify that service of the above and foregoing MOTION TO TEMPORARILY
ALLOW CLAIM OF BINFORD MEDICAL DEVELOPERS, LLC FOR VOTING
PURPOSES was made this 30th day of November, 2006, by depositing a copy of the same in the
United States mail in Las Vegas, Nevada, postage-prepaid, addressed to the following:

DEBTOR AND COUNSEL

Annette W. Jarvis
Ray Quinney & Nebeker P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385

Lenard E. Schwartzer
Jeanette E. McPherson
Schwartz & McPherson Law Firm
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308

USA Commercial Mortgage
USA Capital Realty Advisors, LLC
USA Capital Diversified Trust Deed Fund, LLC
USA Capital First Trust Deed Fund, LLC
USA Securities, LLC
Thomas J. Allison
4484 South Pecos Road
Las Vegas, NV 89121


An Employee of Deaner, Deaner, Scann
Malan & Larsen